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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 302

LUZ PORRATA Y VEVE,
represented by her guardian
JORGE J. SERRALLES,
PETITIONER,

v.

FAJARDO SUGAR CO.,
THE FAJARDO SUGAR CO. OF P.R.,
RESPONDENTS.

CERTIORARI TO REVIEW JUDGMENT OF THE SUPREME COURT OF PUERTO RICO

SANTOS P. AMADEO
Attorney for Petitioner
P.O. Box 1623, Hato Rey
San Juan, Puerto Rico

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PETITION

Petitioner LUZ PORRATA, represented by her guardian JORGE J. SERRALLES, JR. through her undersigned attorney, respectfully sets forth:—

I.
Jurisdiction

The jurisdiction of this Hon. Court is invoked pursuant to the provisions of Vol. 28 — U.S.C.A. # 1258 (3) to review the judgment of the Supreme Court of P. R. of

May 7, 1962 entered as of that date affirming the judgment rendered in this case by the Superior Court of P. R., San Juan Branch. Both judgments are made part of the record, exhibits A & B properly certified.

The Federal Constitutional Question

A. Antecedents facts leading to the Constitutional Question.

1. On August 24, 1953, the then guardian of Luz Porrata, Miguel A. Barasorda, filed a suit in the Superior Court of P. R. San Juan Branch, on behalf of the petitioner for the annulment of a certain contract entered into on October 28, 1941 as evidenced by deed dated December 1, 1941, between Fajardo Sugar Co. of P. R. and by Luz Porrata. The petitioner was represented in the said contract and deed by her husband, as per power of attorney she executed on November 18, 1940. This suit had other objectives not ma-material for the consideration of this case. It was petitioner's theory that the contract and deed of Oct. and Dec. 1941, were null and void by reason of the insanity of Luz Porrata existing at the time of their execution. Exhibits C & D of the record are the amended complaint and the answer to such complaint. Upon stipulation of the parties the case was tried on the separate issue of insanity, all other issues to await the outcome of this.

2. The Trial Court decided that petitioner was of sound mind at the time of the execution of the said contract and deed and held them valid and enforceable. It based its decision on the fact that more than a year prior to their execution, the petitioner had been adjudged sane by decree of the District Court of San Juan of October 14, 1940 and her guardianship dismissed. Prior to the said decree the

petitioner had been adjudged insane by order of the same court and a guardian appointed her on May 8, 1930. A part of the record is Exhibit (E) properly certified, which was part of the evidence had on the hearing which ended in the decision of this case by the trial court.

3. The Supreme Court of P. R., upon the appeal taken by petitioner to review the judgment of the trial court, affirmed said judgment.

4. Exhibit (G) of the record and Exhibits (A to F) contains the evidence taken at the trial court which was before the Supreme Court which is necessary for the disposition of this case by this Honorable Court.

5. The facts appearing from the record may be summarized thusly:—

(a) For a long time prior to October 28, 1941 and December 1, 1941 LUZ PORRATA had been suffering from manic depressive insanity, a type of insanity which recurs on many occasions and actually incapacitates the person for long periods of time and then subsides. In other words, this mental sickness, in its very nature is episodic, a mental disease with alternating periods in which the patient recovers from the acute symptoms of the disease and attains a state of remission of such symptoms, and then is again overtaken by the acute symptoms of the disease, and then recovers to fall again victim of the symptoms of the disease. (See:— Exhs. A, B, E, F. & G record).

(b) It appears from the record exhibits A to G that it was because of her condition of a manic depressive insane, that on May 8, 1930 she was adjudged

insane by court decree and her husband appointed her guardian; that some time in October 1940, proceedings were filed by her guardian, to dismiss the guardianship and for her restitution to her civil and social rights; that the hearing on the proceedings were had and on the evidence submitted she was adjudged sane and the guardianship dismissed as per the order of October 14, 1940. It appears from the record of the proceedings had (Exh. E) that the only basis for such order was the statement of a Doctor who testified that at the time of the hearing Luz Porrata was enjoying a period of remission of the symptoms of her sickness, which was manic depressive insanity. It appears that at such time such proceedings were had, such sickness was of long standing in her, and she had been confined to an asylum on many occasions due to her condition. (Exhs. E - F & G).

(c) Nowhere in the decision of the trial court, nor in the decision of the Supreme Court of P. R. does it appear that any of such courts relied on any specific piece of evidence regarding the mental condition of this person at the particular time of the contract of October 28, 1941 or of December 1, 1941.

In fact, no evidence was submitted by respondents at the trial hearing upon which to base a conclusion that Luz Porrata was enjoying a period of remission on October 28, 1941, or on December 1, 1941. That neither of the courts below makes reference to such evidence would indeed suffice for this Honorable Court to take it as a fact upon which it can safely rely, that there is no evidence in the record regarding the mental condition of Luz Porrata at the particular time of the execution of the contract and/or deed whose validity were challenged in this suit.

(d) On the contrary, it appears from the opinion of the Supreme Court of P. R. that it based its decision on the fact that on October 14, 1940, Luz Porrata was adjudged sane by decree of court and her guardianship rescinded. Such evidence as is cited by the Supreme Court in its decision, that on November 18, 1940 Luz Porrata in person executed a power of attorney on behalf of her husband, and that in 1945 and 1946 she signed certain legal papers can not possibly and judiciously be regarded as evidence of her mental condition on or about October and December 1941. In fact, this shows that the Supreme Court of P. R. in finding that Luz Porrata was of sound mind at the particular time of the execution of the contract and deed; only held so on the basis of the presumption of sanity stemming from the decree of restitution of October 14, 1940 and presumed her sane thereafter and at the time of the execution of the contracts. That such is the case is also shown by the fact that the Supreme Court of P. R. made reference in its opinion to the evidence produced by three doctors regarding the effect of remission in a manic depressive on his capacity to act or contract. This evidence was quoted by the Supreme Court in relation to the state of mind of Luz Porrata at the time of her restitution to sanity on October 14, 1940, not on October 28, 1941 or December 1, 1941.

(e) The record shows (Exhs. F & G) a doctor's certifiate regarding the several times Luz Porrata was confined to the Insular Hospital for the insane suffering from manic depressive insanity, between 1924 and August 27, 1940, also the condition she was each time she was released. This was part of the record evidence before the Supreme Court of P. R. in the appeal taken

by petitioner. It is a resume of the official medical record of this patient for that period of time. It appears therefrom that during such period she was in and out of the hospital seven (7) times.

(f) And it appears from the decision of the Supreme Court of P. R. (also from Exhs. E, F, & G) at pages 6-8, the fact that this disease is episodic, whereby the patient may have intervals of remissions or lucidity, and that generally speaking, may be capable during such remissions. Of course, such evidence as is quoted by the Supreme Court, refers to the time Luz Porrata was declared sound on October 14, 1940, and not to any remission as of October 28 or December 1, 1941, a year or so thereafter. As the closing paragraph of the Supreme Court's decision would show that the Court below did not find specific evidence showing that on October 28 and December 1, 1941, Luz Porrata was insane. In fact it appears from Exhs. A, B, E, and F, that it is fair to say that in finding the petitioner sane on October 28, 1941 and in December 1, 1941, the Supreme Court based its decision on the presumption of sanity of Luz Porrata at such dates in view of the court's decree of October 14, 1940 and not because there was specific evidence showing either sanity or insanity at such very important dates on which the contract was executed.

B. *Statement of the Constitutional Question*

1. The statement of the foregoing facts supported by record exhs. A, B, E, F, G, shows clearly and affirmatively that it was the most solemn duty of the Supreme Court of P. R. to decide the issue brought forth before it by petitioner to which the Supreme Court of P. R. refers at page 5

of its opinion. If it did not do so, petitioner's right to her day in court was denied her, a right flowing from the 14th. and the 5th. Amendment to the Federal Constitution. Petitioner openly challenged before the Supreme Court of P. R. the validity of the proceedings had in the San Juan District Court resulting in the order of October 14, 1940 restoring LUZ PORRATA to full legal capacity and dismissing the guardianship to which she had been subjected by the prior judgment of the same Court of May 8, 1930, declaring her insane and appointing her a guardian. It was the position of petitioner before the Supreme Court of P. R. and it is her position now, that the order of October 14, 1940 is null and void as the San Juan Court acted without jurisdiction or in excess of it, in entering such order. Exh. (E) affirmatively shows that such order was entered based on evidence that merely showed that LUZ PORRATA, a manic depressive person had been found, days prior to the hearing on the order and during the hearing, undergoing a period of remission of the symptoms of her disease. It was the position of petitioner that Article 168, 180 & 217 of the Civil Code of P. R. absolutely forbids restitution of an adjudged insane to the status of sane and the removal of his guardian just because at a particular time he may be found enjoying a period of lucidity or remission. (See Statutes of P. R. Annotated, Title 31, Sections 662, 703, 791). Since remission is no more than an interval of lucidity or may be less so, indeed; the San Juan District Court on the very evidence presented in the proceeding had, did not have the power to discharge the guardianship instituted for her on May 8, 1930, nor pronounce her capable and *cured* of a disease *chronic* in her at the time the proceedings were had, nor restore her to civil and social life. Exhibit G shows the testimony of the experts regarding the disease, presented by both parties on this particular point.

3. It was, for one thing, the Constitutional duty of the Supreme Court of P. R. to decide such issue, and for another, it was petitioner's right flowing from the Due Process Clause of the Federal Constitution, to get a decision from the Supreme Court of P. R. of such issue which was most vital as it shall be presently shown. The Supreme Court of P. R. utterly failed to decide such point in rendering its decision and denied petitioner due process of law. Due process of law is not limited to the right to be heard. It also includes necessarily, the right to a decision of the matter upon which litigants are heard.

4. Such issue was properly before the Supreme Court of P. R. It could not be outflanked because collaterally brought forth, or because it was not raised before the trial court. The question was jurisdictional and affected the very vitals of the proceedings and order of October 14, 1940 and the very vitals of the case. The issue was most crucial to a judicious decision of this case because as shown hereinbefore, there was no evidence whatsoever upon which the Supreme Court of P. R., nor the trial court could rely, in deciding that LUZ PORRATA was sane and capable on Oct. 28, 1941 and on Dec. 1, 1941, nor specifically showing her state of mind at such dates, or whether she was or not lucid at such particular dates, or her symptoms remitted. On the contrary, it appears from the decision of the Supreme Court of P. R. that its conclusion pronouncing LUZ PORRATA sane at such crucial dates, stems from the very fact of the order of Oct. 14, 1940 cancelling the guardianship and pronouncing this person sane. Had the Supreme Court decided the vital issue in favor of petitioner, no presumption of her sanity as of Oct. 14, 1940 and thereafter could have ensued. Such presumption would have arisen if the October 14, 1940 was valid. Not so if invalid. If invalid, LUZ PORRATA would have had to be presumed

insane, for all the period covering the time of the judgment of insanity of May 8, 1930 and appointing her a guardian, and thereafter up to and including the very moment of the execution of the contract of Oct. 28, 1941 and of the deed of Dec. 1, 1941.

5. And the fact that the evidence on the proceedings for the order of Oct. 14, 1940 showed that she attained an interval of lucidity or remission at such time, and that on Nov. 18, 1940 she executed a power of attorney, does not change the situation. A manic depressive of long standing, as such, who attains lucidity at certain point of the evolution of the disease, an interval of lucidity or a remission of the symptoms of the disease, is not presumed to continue lucid from that point thereafter.

(See the testimony of the experts, for both parties Exhibit F)

Turley v. *Turley*, 30 NE. 2nd. 64, 66
Schatzberg v. *T.B.B.*, 70 N.Y.S. 2nd 774
In Re Prentice Will, 181 N.Y.S. 679
Meldog v. *Hamblin*, 115 S.O. (2nd) 241
In Re Martino Will, 144 NYS. 174
In Re Gianque's Will, 145 N.Y.S. 364
Ex-Parte Zanetti, 208 P. (2nd) 304
Suc. of Tyler, 190 S.O. 656
Dean et al v. *Jordan*, 79 P (2nd) 332
In Re Wright, 60 SW. 623
Wharton & Stille Med. Jur., Vol. 1, pages: 682-683, 691-692, 695
Manresa, Commentaries to the Spanish Civil Code 6th Ed. (Spanish Text) Pages 263-264, 37., 375
Castan—Spanish Civil Code, Vol. 2 (Spanish Text) Book I at P. 214-215

Scaevola, Spanish Civil Law, Vol. 4 (Spanish Text) P. 372-374

Laurent—French Civil Code — Vol. V (Spanish Text) 338-347, 467, 468

6. The very nature of the disease that has affected Luz Pobrata all of her life, the very fact that she had been suffering from it since 1949 and was adjudged insane and put under guardianship in 1930, and the very nature of the impossibility of predicting the stability of the lucid interval or remission of the manic depressive insane precludes such presumption. From record (Exh. B) it appears that Luz Pobrata was again under guardianship in 1951 by court decree.

See the testimony of the experts for both parties — Exh. G & F. See also cases above cited).

7. To presume that an insane manic depressive person of all his life, once he attains lucidity at a certain interval during the process of the disease, will remain lucid thereafter, if the contrary is not proven, upsets the very nature of such condition both from the standpoint of medico-legal science and from the standpoint of the history of petitioner's case. See authorities cited supra.

8. Certain of the decisions of the State of Louisiana seem to be a variance.

See: *Cormier* v. *Myers*, 65 SO. (2nd) 345
Succession of Schmidt, 53 SO. (2nd) 699
Artigue v. *Artigue*, 26 SO. (2nd) 699
Clanton v. *Shattuck*, 30 SO. (2nd) 283

But such decisions depart from principle and precedent long established. They fail to grasp the point that tempo-

rary insanity and habitual or permanent insanity do not derive their meaning from recurrence or permanency or the maniacal state of mind in the individual. Temporary insanity derives its meaning from the fact of its cause rather than from the fact of recurrence. The same goes with habitual or permanent insanity. Alcoholic insanity has always been referred to as temporary. Its cause is not endogenous with the individual and simply would disappear from the individual that abstain from its use. So is the case of toxic insanity as was involved in the *Schmidt* case, *supra*. No one would refer to the schizophrenic, the paranoic, or the manic depressive as a person suffering from temporary insanity simply because they have periods of remission alternating with periods of maniacal states. To classify LUZ POBLETA as a person suffering from temporary insanity is to close our eyes to the record and history of her illness, and to its nature as it has been found by science. (See cases, supra. See also:—

Fendler v. Roig, 58 SW. (2nd) 460
James v. Schmith, 56 SE. (2nd) 466
In Re Wright, 60 S.W. 623

Again, the Louisiana decisions are contrary to principle long established in Civil Law that the lucid interval in an *adjudged* insane is not to be presumed and that the onus falls upon he who relies in it for any purpose whatever.

See:—

Manresa — Commentaries to the Spanish Civil Code. Vol. 5, P. 375 (6th. Ed.) Spanish Text says:—

"The principle being admitted that the insane may make his will when enjoying a lucid interval, two situations were confronted by the legislature, to wit:—

either suppose that the will was made by the insane while insane in the absence of proof that it was made in an interval of lucidity, or on the contrary, to presume it was made because of the mere fact it was executed, during a lucid interval, in the absence of proof to the contrary.

The code has adopted the first of such two systems which is more rational because in such conditions of health the lucid interval is the exceptional or accidental while the mental unsoundness is more general. But the principle accepted is nothing more than a presumption juris-tantum."

See also:

Art. 614 and 615 of the Civil Code of P. R. (Title 31 = 215, P. R. Ann. Statutes) herein appended in this petition.

See also:

Mac Colbon v. *Banks*, 50 SE. 2nd 199
Casad v. *Rigler*, 124 S. W. 196
In Re Barnett, 191 P (2nd) 285,
Harbour v. *State*, 78 SO. (2nd) 466
I. & I Corp v. *B.* 12 SE. 2nd 421
In Re Wright, etc., 60 SW. 623
In Re Fendler v. *Boje*, 58 SW. (2nd) 460
20 Am. Jur. = 128 at P. 162
94 C.J.S. = 36 at p. 741
94 C.J.S. = 63 at P. 768-769

In *Wharton & Stille's Medical Jur.*, Vol. I at P. 692:

"Lord Brougham discussed this question of presumption in a case of recurring insanity, and showed, that

the presumption if any, was rather in favor of insanity in case in which mental disease was known to have pre-existed for long periods. His statement was so clearly reasonable and his authority is so high that his opinion may be accepted as a standard one by medical jurists."

9. Being the jurisdictional issue regarding the validity of the order of the District Court of San Juan of October 14, 1940 so controlling in the case, the Supreme Court of P. R., in not deciding the said issue and applying the presumption emerging from the legal impact of the order and in holding Luz Polanco of sound mind at the time of the execution of the contract, based on such order of Oct. 14, 1940, in fact did not decide judiciously but rather by edict. And it can not be said that the vital issue was decided simply because it stated in its opinion, P. 6-9, that appellant-petitioner herein was not correct for reasons that certainly do not touch on the jurisdictional point discussed fully in petitioner's brief filed in the Supreme Court of P. R. and already referred to in this petition. On the contrary, it appears from the Supreme Court's decision at pages 6-9, that in deciding the case it merely assumed that the order of October 14, 1940 was valid.

The foregoing points indeed show that it is not petitioner's stand before this Honorable Court that the Supreme Court of P. R. erred in deciding the issue already referred to, but that it failed to decide it altogether and that a decision of such issue was most necessary for a judicious decision of the case, thus denying petitioner due process of law guaranteed by the 14th Amendment to the Federal Constitution. It shall be shown hereinafter that such issue, not decided by the court below, could have been decided only in favor of petitioner under applicable local law and that as a consequence thereof the decision could

not have been in favor of respondents but in favor of petitioner, for reasons which have been already discussed and which shall be discussed more fully hereinafter.

II.
Question for Review

A. The Supreme Court of Puerto Rico failed to decide and was in error in not deciding that the decree of the San Juan District Court of Oct. 14, 1940 and the proceedings undertaken to procure the said decree were null and void.

B. It erred in not deciding that on Oct. 14, 1940, petitioner was under guardianship of her husband instituted on May 8, 1930.

C. It erred in not deciding that the power of attorney executed on Nov. 18, 1940 was void at its inception, for that matter.

D. Erred in deciding this case on the basis of the presumption of sanity of Luz Porrata as of Oct. 28, 1941 and Dec. 1, 1941.

E. In the alternative, it erred in presuming sane Luz Porrata on Oct. 28, 1941 and on Dec. 1, 1941 on the basis of evidence to the effect that the symptoms of her disease were remitted on October 14, 1940.

F. Erred in not holding Luz Porrata insane on Oct. 1941 and Dec. 1, 1941 as per the presumption of continued insanity arising from the fact of her adjudged incapacity of May 8, 1930 and the appointment of a guardian for her at such date.

G. Erred in holding there was no evidence of her actual insanity, on Oct. 28, 1941 and Dec. 1, 1941 and in not adjudging her insane as of such dates.

Statutes of Puerto Rico herein involved are Articles 168, 217, 180, 183, 614, 615 and 1629, 212-214-215 of the Civil

Code of Puerto Rico (Laws of Puerto Rico Ann. Title 31 Sections 662, 791, 703, 706, 2114 and 2115; 786 (5) 788 & 789 (1). All are set forth at Appendix.

IV.
Statement of the Case

A. In stating the facts material to the questions presented in a concise manner, petitioner makes reference to the facts as found by the trial court and to such facts as appear from the opinion of the Supreme Court of P. R. (Records exhs. A & B) and also from record —. exhs. E F G. The fundamental facts have already been stated in presenting the Federal Question and there is no need to be repetitious.

B. The facts which appear in the documents herein appended in regard to petitioner's disease, states details such as the following:— That she has been suffering from the disease since 1919, its early diagnosis being Manic Depressive Insanity; the fact that she had to be interned more than seven (7) times between the years 1919 and 1940 in Hospitals for the mentally insane; the fact that after 1942 she was also in and out of such institutions, suffering from the disease; the fact that by its nature this disease is constitutional or hereditary and provoked by endogenous factors stemming from nerve cells innate in her; the fact that this is called remission of the symptoms in psychiatry; the fact that during remission the patient may or may not be capable to obligate himself or to contract; the fact that she had periods of incomplete and complete remissions during the period covering 1919 to 1940, and from 1942 to 1951; the fact that in psychiatry a manic depressive person of long standing as such which has had several attacks has a very serious prognosis, and is not cured if remission

obtains; the fact that in 1941 the petitioner was suffering from chronic insanity, manic depressive in character; the fact that there is no medical way of saying that a lucid interval or remission at a particular time remains so for any particular length of time thereafter, except by an examination of the patient at the time she performs an act or a contract; the fact that respondents presented no evidence whatever of the state of mind of LUZ POBLETE at or near the time that the contract and deed were executed; the fact that on May 8, 1930 LUZ POBLETE was adjudged insane by a court of competent jurisdiction and a guardian appointed to represent her; the fact that this guardianship ended by the decree of Oct. 14, 1941; the fact that a few days before the proceedings were had for that purpose, she was discharged from the insane asylum and her symptoms remitted; the fact of the proceedings had, the evidence taken at the hearing and the fact that the medical evidence disclosed that her condition did not warrant the dismissal of the guardianship, not her restitution by court decree to her civil and social rights; the fact that during 1941-42, after her capacitation, she was mentally ill, the fact that from 1943 on she was in and out of Hospitals for the insane; the fact that in 1951 a guardian was appointed for her.

C. Petitioner relies on rule 31 (2) of the rules of this court for not having filed the complete transcript of the *evidence*. Petitioner believes that sufficient record of the proceeding in the court below has been filed and upon which this Honorable Court may grant the remedy pursued by the petitioner.

V.

Argument in Support of the Petition

A. Petitioner believes that enough has been said up to this point regarding the jurisdictional question, and which

in the opinion of petitioner makes a case for the issuance of a writ of certiorari by this Honorable Court to review the judgment of the Supreme Court of P. R. In regard to the merits of the controversy, the Argument follows:

1. If Luz Pomata was declared insane by decree of court on May 8, 1930, that is, suffering from manic depressive insanity, then, assuming the invalidity of the decree of Oct. 14, 1940, it must be presumed that she continued insane thereafter during the period from 1930 to Oct. 28, 1941, or Dec. 1, 1941.

Legal precedent hereinbefore cited would suffice to sustain this proposition.

2. Evidence of her state of remission on Oct. 14, 1940 amounts to no more than evidence of a lucid interval at that particular time.

This proposition is sustained by legal precedent already cited before.

3. A manic depressive insane person of long standing as such, is not presumed to have continued in a state of remission from a particular date of such remission for any particular time thereafter. The very nature of this disease, or the very nature of the medical history of petitioner's case, precludes the presumption that Luz Pomata's state of remission or lucid interval found on Oct. 14, 1940 continued thereafter so that such condition was presumably present at the time of the execution of the contract of Oct. 28, 1941, a year after the date her state of remission was certified to by a doctor.

Legal precedent cited hereinbefore sustains this point.

4. For that matter, that she was lucid at the time of the

execution of the power of attorney on Nov. 18, 1940 is not evidence of lucidity on Oct. 1941.

5. Given the invalidity of the proceedings and of the decree of Oct. 14, 1940 petitioner made a prima-facie case upon showing as it did that LUZ PORRATA was adjudged insane on May 8, 1930 and a guardian appointed to her by a decree of a court. From that point on it was respondent's case to show that LUZ PORRATA was capable or lucid, not on Oct. 14, 1940, not on Nov. 18, 1940, but on Oct. 28, 1941 and or Dec. 1, 1941 when the contract was executed.

See legal precedent cited hereinbefore.

6. That petitioner was competent or lucid on the dates she executed the power of attorney, on Nov. 18, 1940 is of no moment if the decree of court of Oct. 14, 1940 is null and void, because in such case she was legally "non compos mentis" and still under the guardianship of her husband as per the prior decree of the District Court of San Juan of May 8, 1930, and she could not have executed any power of attorney to her husband that was her guardian and her husband could not have represented her in the execution of the contract of Oct. 28, 1941, nor in the deed, without the judicial authority of a court of competent jurisdiction.

Civil Code of P. R. Art. 212, 214 and 215.
See Statutes of P. R. Annotated—Title 31) Sections 786.(5) 788 & 789 (1)

7. The court's decree of October 14, 1940 is null and void, ab initio.

(a) The Supreme Court of P. R. did not rule on this point. In fact has never ruled on it in any of its decisions. Art. 168 of the Civil Code of P. R. (P. R. Stat. Ann. Title

31 § 662) provides that insane persons, even though they have lucid intervals are subject to guardianship. Art. 180 & 183 of the said Code (P. R. Statutes Ann. Title 31 § 703, 706) requires court proceedings and judicial pronouncement of incapacity or insanity as a prerequisite for the appointment of the guardian for the insane. Art. 217 of the Civil Code (P. R. Statutes Ann. Title 31 § 791) prescribes that guardianship ends by the termination of the causes which motivated it.

All civil law experts and commentators agree that once the guardianship befalls upon an insane person by court decree it may not be removed nor the person restored to the status of sane because at the time of the proceedings for restoration the patient may be enjoying an interval of remission or lucidity.

Manresa, vol. 2, Pages 263-264 (6th Ed. says:—

> "Tutorship follows the insane during all the course of this disease, even if it does not annuls his capacity to reason permanently. It may be admitted that such terrible disease admits of intervals of soundness in which the person may transact business or execute a contract or administrates his property; but it is difficult to appreciate first and justify afterward in the insane an interval of lucidity that the legislator, in fear of fatal consequences, possible frauds, has prescribed that the insane is subject to guardianship even if he has lucid intervals.

> Medically, lucidity is not expected at any time in the imbecile, or idiot, but it being possible, in the insane, it is to be expected the difficulty of showing a-posteriori if at a certain date the interval of lucidity existed, and that what he did at such date was valid. For that mat-

ter the Code provides for the guardianship of the insane even when his sickness is intermittent; that is why the code permits the insane to make his will if lucidity at such time is accredited medically. (Art. 665 . . . (a translation)

The distinguished commentator was referring to Art. 665 of the Spanish Civil Code which is the equivalent of Art. 614 of the Civil Code of P. R. quoted in the appendix to the petition.

See also:— Scaevola commentaries to the Civil Code, Vol. 4— P.374 — Spanish Text from which we translate:—

"The Roman Law only subjected to tutorship, the furious and the prodigal; sed et mente, captis et surdis, et mutis, et que morbo perpetuent laborent; but as controversy arose regarding if during the interval of lucidity it could be considered that the guardianship had ceased to exist and the insane authorized to execute the acts peculiar to civil life, such as making a will, the Justinian Code settled the controversy prescribing in Book 5, Title *LXX*, Law 6, that they could validly act but that guardianship continued. This brief remembrance would force us to continue the comment. The Code states that the insane shall continue under guardianship, even if they had lucid intervals. The principle of the Roman Law stands".

See also:—

Castan Spanish Civil Code—Book I, Vol. 2, P. 214-215, (Spanish Text) Valverdo Commentaries to the Spanish Civil Code, Vol. 1, P. 256 (Spanish Text)

The French Civil Code follows the same reasoning (Laurent Commentaries to the French Code, Vol. V, at p. 338-347, 467, 468 (Spanish Text)

The same rule has been adopted in the U.S.

See:—

In Re Sneddon, 149 P. 527
People, Ex. R. Thaw v. *Lamb*, 118 N. Y. S. 392
In Re Burnett's Guardianship, 191 P. 2nd 285
In Re Ireland, 284 N. Y. S. 504
In Re Chasson, 293 N. Y. 972
In Re Peters, 264 P. 2nd 1109

(b) The theory of the Civil Code of P. R. is founded on a reason of public policy and order. Constitutional insanity like Manic Depressive Insanity, like Paranoia, Schizophrenia and the like, are in their nature permanent though the patient may have intervals of remission which is no more—may be less—than a lucid interval. The uncertainty of its cure and prognosis leads to the wisdom of Art. 163 of the Civil Code and to the interpretation it has been accorded by authorities of recognized standing.

Luz Porrata could have been capacitated validly on Oct. 14, 1940 for a special purpose only and could have entered into a contract at that time by order of the court but not for the full capacitation in futuro she was accorded by the court decree of Oct. 14, 1940. The same could have been accomplished on Oct. 28, 1941 by order of the Court if she was lucid at that time. But it is the theory of the Civil Code of P. R. that persons suffering from insanity may not be made "sui juris" by judge made law, simply because they are undergoing lucidity or remission at a particular time.

The invalidity of the decree of Oct. 14, 1940 appears

from the face of the record of the proceedings—a proceeding in Rem—.

Its invalidity was presumed to have been known by all the world including Fajardo Sugar Co., and including Augusto O. Marquez, her husband, who obtained a power of attorney from her on Nov. 18, 1940 and pretended to obligate her in Oct. 1941.

(d). It is therefore submitted that a federal constitutional question being present herein which arises from the decision and judgment of the Supreme Court of P. R., separable from the errors assigned herein, and that the unconstitutional action of the Supreme Court of P. R. in not deciding the undecided issue and in not deciding it in favor of petitioner and all other errors incurred by it stemming from such action, justifies the issuance of a writ of certiorari by this Hon. Court to review the judgment of the Supreme Court of P. R.

Petitioner very respectfully prays the Court that such writ issue. San Juan, P. R., this 30th day of July 1962.

(s) SANTOS P. AMADEO
Attorney for Petitioner
P.O. Box 1623, Hato Rey
San Juan, Puerto Rico

I certify that on this date a copy of the foregoing petition and of all its appendixes has been sent to Mr. Gonzalo Sifre, Box 205, San Juan, P. R. attorney for respondents. San Juan, P. R. this 30th day of July 1962.

(s) SANTOS P. AMADEO

APPENDIX TO THE PETITION

LAWS OF P. R. ANNOTATED:—TITLE 31

Sect. 662:—Persons subject to tutorship

"The following are subject to tutorship:

1. Minors not lawfully emancipated.

2. Insane or demented persons, even though they have lucid intervals, and the deaf and dumb who cannot read or write.

3. Prodigals or habitual drunkards declared such by final judgment.

4. Persons under sentence of civil interdiction.—Civil Code, 1930, 168

History. Derivation. Civil Code, 1902, 238; Spanish Civil Code, art. 200.

Sect. 703:—Tutorship of insane and deaf and dumb—Court decree

"A tutor shall not be appointed for insane, demented and deaf and dumb persons, when of age, without a previous degree of the part of the Superior Court of their domicil that they are incapable of administering their property.—Civil Code, 1930, 180; July 24, 1952, No. 11, p. 30 eff. July 25, 1952."

History. Codification. Term "district court" was changed to "part of the Superior Court" pursuant to Act. July 24, 1952 No. 11

Derivation. Civil Code, 1902, 250; Spanish Civil Code, art. 216

Sect. 786:—Acts requiring authorization of court

"The tutor shall require the authorization of the proper part of the Superior Court":—

5. "To alienate or encumber the real property which constitutes the capital of the minor or incapacitated person or to make contracts or execute acts requiring recording; also to alienate personal property, the value of which exceeds two hundred dollars, and to execute lease contracts for a longer period than six years; but in no case shall the contract be entered into nor the authorization granted for a period of time in excess of that required by the minor to become of age".

Sect. 788:—Procedure for authorization of court.

"The judicial authorization to alienate, encumber or lease the property of the minor or incapacitated person or to settle or comprise by arbitration private or judicial matters affecting the rights of the minor or incapacitated persons, shall be decided by the part of the Superior Court wherein the property is situated, or by the part of the Superior Court where the litigious has been or should raised, after demonstrating the necessity and utility involved in the case, in conformity with the provisions of this title and those of an act relative to special legal proceedings.—Civil Code, 1930, 214; July 24, 1952, No. 11, p. 30 eff. July 25, 1952.

Sect. 789:—Prohibited acts

"Tutors are prohibited from:—

1. Donating or renouncing things or rights belonging to the minor or incapacitated person:

Sect. 791:—Termination of tutorship.

"Tutorship ends:—

1. By the minor attaining the age of twenty-one

years, by his being adopted, and by emancipation, with the limitations established by law.

2. With reference to incapacitated persons, those subject to interdiction or prodigals, by the causes thereof being removed.—Civil Code, 1930, 217.

History. Derivation. Civil Code, 1902, 287; Spanish Civil Code, art. 278.

Section 2114:—Wills by lunatics

"Whenever a lunatic desires to make will during a lucid interval, the notary shall appoint two physicians to examine him previously, and he shall not execute it unless the latter answer for the incapacity of the testator, including their opinion in the will, which shall be subscribed by the physicians beside the witnesses.—Civil Code, 1930, 614.

History. Derivation. Civil Code, 1902, 673; Spanish Civil Code, art. 665.

Section 2115:—Determination of capacity of testator.

"In order to judge of the capacity of the testator, his condition at the time of the execution of the will only shall be taken into consideration.—Civil Code, 1930, 615.

History. Derivation. Civil Code, 1902, 674; Spanish Civil Code, art. 666.

EXHIBIT "D"

IN THE SUPREME COURT OF PUERTO RICO

Luz Porrata Doria-Veve, represented by her tutor Miguel A. Barasorda, substituted by Jorge J. Serrallés,

Plaintiff-appellant,

v.

The Fajardo Sugar Co. of Puerto Rico and Fajardo Sugar Company,

Defendants-appellees.

12,116

Appeal from the Superior Court, San Juan Part

Nullity of Actions and of Contracts

Division composed by the Chief Justice Mr. Negrón Fernández and Associates Justices Mr. Rigau and Mr. Dávila

San Juan, Puerto Rico, May, 7, 1962

Per Curiam: On May 8, 1930, plaintiff, Luz Porrata Doria Veve, was found to be incapable of administering her property and governing herself. Her husband, Augusto O. Márquez, was designated tutor. By an order of October 18, 1940, the District Court of San Juan ordered and decreed "that in consideration of the complete recovery of Luz Delia Silva Porrata Doria Veve, the latter is competent to govern herself and to administer her property and, therefore, she is hereby rehabilitated as to all her civil rights. . . The tutelage exercised by petitioner Augusto O. Márquez, the petitioner's husband, is hereby terminated, and as she has approved the accounts of tutorship, executing in favor of her husband and tutor a release in settlement of account, the court orders the cancellation of the bond given by him to secure the discharge of his duties." By deed No. 220 of November 16, 1940, executed before Notary Public Francisco Rebollo López, Luz Porrata Doria gave her aforesaid husband a power of attorney as ample and sufficient as might be required and necessary in law.

Plaintiff and two sisters owned in common a farm dedicated to the cultivation of sugar cane. Fajardo Sugar Co., (1) defendant herein, financed them and, consequently, it paid the taxes levied thereon. At one time Fajardo failed to pay the taxes and it acquired the property at the tax sale. The Porrata Doria sisters sued Fajardo Sugar on the ground that Fajardo was under the obligation to pay the taxes. Judgment for the plaintiffs was entered in that suit. We affirmed on appeal. **Porrata v. Fajardo Sugar Co. of P. R.**, 57 P.R.R. 615 (1940).

Fajardo Sugar Co. appealed to the Federal Court of Appeals for the First Circuit. Pending the appeal, the Porrata Doria sisters and Fajardo Sugar agreed to compromise all their pending issues and in return Fajardo would drop its appeal. Augusto O. Márquez, as agent of his wife and the other two Porrata Doria sisters, signed the transactional agreement. Fajardo was represented by John Bass. The agreement was signed in New York on October 28, 1941, and it was put in a public deed in Puerto Rico on December 1, 1941. Augusto O. Márquez again appeared as agent of his wife and her sisters.

In September 1945, Luz Porrata Doria filed a petition for voluntary bankruptcy in the Federal District Court for the District of Puerto Rico, which was sworn to by petitioner herself before Notary Enrique Igaravídez. In December 1946, through her counsel and together with her two sisters, she filed a suit in the Humacao District Court against Puerto Rico Production Credit Association.

Nine years passed from the date the transactional agreement was signed. On January 3, 1951, the Humacao District Court, at the request of Augusto O. Márquez, issued an order declaring Luz Porrata Doria incompetent to govern herself and her properties, and designated Miguel Angel Barasorda as her tutor.

On August 24, 1953, Miguel Angel Barasorda filed the instant suit against Fajardo Sugar. On July 20 an amended complaint was filed. The prayer of the complaint reads:

"1. To declare null and void the document of settle-

(1) **Two companies were sued, but we shall refer to both as Fajardo Sugar.**

ment executed in behalf of the plaintiff and Fajardo in the City of New York in the year 1941.

"2. To declare null and void the mortgage executed in behalf of the plaintiff in favor of Fajardo, as per deed No. 101 of December 1, 1941, before notary Raúl Benedicto.

"3. To order Fajardo to render an account of the income and benefits received by said company and by its stockholders; and to render an account of all the benefits produced by said farm during the years in which Fajardo Sugar Growers Association was in illegal possession of the farm, in collusion with Fajardo, and for the benefit of the latter and its stockholders.

"4. To declare and decide that, had the farm involved herein been dedicated during the years in which Fajardo Sugar was in illegal possession thereof, to the best use and exploitation, said farm would have produced a sum in excess of $600,000, of which amount a one-third share belongs to the plaintiff.

"5. That in the alternative, defendants be sentenced to pay to the plaintiff as damages, a sum equal to one-third of what the farm involved herein might have produced during the years in which it was illegally in the hands of defendants, which sum, in the opinion of plaintiff, would exceed $200,000.

"6. Declaring and establishing that the benefits received by Fajardo, out of its illegal possession, have resulted in direct benefit to Fajardo Sugar Company and its unjust enrichment, the latter having had knowledge of the facts stated herein since the date of its organization.

"7. That plaintiff be granted any other remedy in law to which she might be entitled under the facts stated in this complaint, plus costs and attorney's fees."

The trial court dismissed the complaint. It held that "the declaration of judicial rehabilitation establishes the presumption of plaintiff's competency and it was not destroyed

through evidence worthy of credit and supported (sic) by ample expert and oral testimony." It added: "For the documents of settlement to be null and void the plaintiff must have been mentally incapacitated during the dates on which they were executed. The Court believes, and it so declares, that said documents are valid and binding for the plaintiff. . .".

In support of her appeal plaintiff challenges the validity of the order issued by the District Court of San Juan on October 18, 1940, rehabilitating plaintiff as to all her civil rights and terminating the tutorship that had begun in the year 1930. She bases her challenge on the fact that the San Juan District Court lacked jurisdiction to declare that plaintiff's incapacity had ended. She claims that this is so because "the Court that entered the order of October 18, 1940, knew or should have known —took or should have taken judicial notice of the fact— that the recession or cure of the symptoms of a manic-depressive person known by the Court to have been hospitalized in the Insane Asylum on several previous occasions, is not equivalent to a **recovery** from said illness, neither in law nor in psychiatry." In addition to the fact that this question was not raised in the trial court and that "against the decree terminating the proceedings for incapacity, the interested parties may interpose a suit in the ordinary manner, by means of an oral and public trial", Civil Code No. 185 —31 L.P.R.A. No. 708— which action was not filed by the interested parties, the truth is that her position is not correct. Plaintiff's own expert witness, Dr. Troyano de los Ríos, asserted that when suffering from a manic-depressive psychosis, a person may, during periods of recession, understand the nature of certain acts. Dr. Troyano was questioned:

"Q. . . .Does the fact that for a number of years a person suffers from a manic-depressive psychosis mean that that person has been incompetent during all that time?

"A. No. Not during all that time.

"Q. Such person has not been incompetent uninterruptedly?

"A. No. . . . During periods of recession, said person was not incapacitated.

"Q. Doctor, you mentioned psychotic events that leave residuals, not events that may leave residuals, and I would like to know whether the fact that an event may leave a residual means that that person has remained incompetent in connection with the acts of his civil life?

"A. No, sir."

Dr. Roselló, defendants' expert witness, testified as follows:

"Q. Whether in your opinion it is a characteristic of a manic-depressive psychosis for a patient to have periods of recession at which times he becomes normal?

"A. Yes, this may be found in many psychiatric books, which say that after an attack and some times many attacks of manic-depressive psychosis, thereafter the person almost always fails to present any impairment of his intellect, affectivity, and judgment.

" . . . . . .

"Q. Does a person who suffers psychotic episodes such as those set forth in the record of this lady, during a period of recession, enjoy sufficient mental capacity to understand civil acts, to legalize contracts, to live in society, etc.?

"A. If it happens during a period of recession, that person is certainly competent.

" . . . . . .

Q. Doctor, can a person who suffers from a manic- depressive condition, manic type, give the impression of being normal without being so?

"A. It would be rather difficult, inasmuch as the state of a manic condition is something of which any person, unfamiliar with medicine or psychiatry; may become aware, because it is precisely the picture that brings to mind the meaning of a state of insanity, that is, it is unmistakable.

"A. In a manic condition I say that he can not, for the person has no control whatever over his emotions and therefore he could not pretend to be calm while being in a manic state."

Dr. Massanet was the specialist who testified at the hearing of the case concerning the determination of incapacity.

"Q. Do you consider this lady's mental condition...
"A. She is perfectly competent.
"Q. To govern herself and administer her property?
"A. Yes, sir. I suggested to her to be present here in Court...

"Counsel: She is here in Court."

Plaintiff went to execute the deed of power of attorney before Notary Rebollo López in Fajardo. She is described by the notary as follows:

"Well... Doña Luz behaved as a completely normal person. Furthermore, I had no idea she had ever been ill. Her behaviour was completely normal; completely reasonable. She answered all my questions, gave no sign leading me to think that she was suffering from any mental illness."

In **Fuentes** v. **Federal Land Bank**, 64 P.R.R. 193, 196 (1944), involving a person who had entered into a contract during a period of recession, we said:

"...But since according to No. 1214, consent is shown by the concurrence of offer and acceptance with respect to the thing and the consideration which are to constitute the contract, it is at that very moment when the meeting of the minds takes place that the capacity to give consent must exist. ..."

To the same effect: **Rivera** v. **Heirs of Díaz**, 70 P.R.R. 168, 175 (1949), where we held that:

"...The party may be insane from the standpoint of the psychiatrist, and yet be mentally competent to

understand the scope of a particular transaction. In deciding the instant case, the trial court said:

"If we bear in mind that plaintiff has been on various occasions in recession of symptoms; that she was rehabilitated by the Court on petition of her husband on October 18, 1940; that she executed a power of attorney in favor of her husband on November 16, 1940, and availing himself of said power of attorney her husband executed the documents whose nullity she now seeks; that she was released from the Insane Asylum in recession of symptoms on August 27, 1940, and that her husband had the opportunity of noticing his wife's behavior in order to know whether he should act as his attorney-in-fact or by virtue of judicial authorization to execute the settlement of the suits, we must necessarily conclude that plaintiff enjoyed sufficient capacity at the time she executed the power of attorney and the transaction was carried into effect. Decision to the contrary would be tantamount to finding that everything done by her attorney-in-fact was done in bad faith, in order to destroy defendants' right to continue with their appeal, and finding also that both, the declaration of rehabilitation to enable her to act for herself in the documents of settlement and the last declaration of incompetency to file this suit, were done in bad faith. . . ."

We are convinced that the evidence clearly shows that when plaintiff executed the deed of power of attorney in favor of her husband she was in the full exercise of her capacity to bind herself. The expert and oral testimony thus prove. Nothing in the evidence indicates that she was not when she signed the transactional agreement on October 18, 1941, or when as agent for her and her sisters, her husband appeared to ratify the agreement between the parties. It should be noted that subsequently to the dates on which the power of attorney was executed and the transaction with the defendants was entered into, plaintiff herein appeared twice in court in her own behalf. There is nothing in the evidence to justify any modification on the finding of the trial court.

The judgment entered by the Superior Court, San Juan Part, on January 25, 1955, will be affirmed.

JUDGMENT

Division composed by the Chief Justice Mr. Negrón Fernández and Associate Justices Mr. Rigau and Mr. Dávila

San Juan, Puerto Rico, May 7, 1962

For the reasons set forth in the foregoing **per curiam** opinion, the judgment entered by the Superior Court, San Juan Part, on January 25, 1955, in the above-captioned case, is hereby affirmed.

It was so ordered and decreed by the Court as witnesses the signature of the Chief Justice.

(s) Luis Negrón Fernández
Chief Justice

I attest:

(s) Ignacio Rivera
Secretary